IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2265 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GANGUBEN, WD/O DECEASED CHIMANBHAI JADAV

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2265 of 2001

MR DA SURANI for Petitioner No. 1

MS ROHINI ACHARYA, AGP for Respondent No. 1-2

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 27/08/2001

ORAL JUDGEMENT

Heard ld. counsel appearing for the petitioner and Ms. Acharya, ld. AGP for the respondent Nos.1 & 2. Respondent no.3 is served.

It is the say of the petitioner that she being a widow of the deceased government employee, she should be paid family pension under the Scheme framed by the Government. The petition is specifically clear as it is contended that the deceased husband of the petitioner was working with R & B Department of State of Gujarat, Sub Division of District Amreli. Para-2 of the petition reveals that the deceased Chamanbhai Jadav-husband of the petitioner was employed as a Daily Wager in the year 1972 and has expired during the service. On the basis of the circular dated 31.7.1987 issued by the State of Gujarat, the petitioner applied for family pension benefits as the deceased has served the department for more than 19 years. It is contended by the State by filing affidavit-in-reply that as the services of the petitioner as Daily Wagers is less than five years, the petitioner is not entitled to the benefit of family pension. The averments made in the affidavit-in-reply are very general in nature. They have considered the length of service of the petitioner as Work Charge Employee and has tried to avoid conveniently the period of service rendered as daily wager by the husband of the petitioner. Ld. counsel appearing for the petitioner has rightly submitted that the averments made in para-2 that the husband of the petitioner was working as a Daily Wager since 1972, has not been specifically denied. Absence of specific denial as to this fact and the contents of the letter Annex.C written by the Joint Secretary, Finance Department, Government of Gujarat who is also Chairman, Pension Vigilance Committee & Deputy Secretary (Pension) to the Executive Engineer, R & B, Sub Division Surendranagar dated 13.7.1999 takes me to a conclusion that the petition needs to be allowed. The ratio propounded by this Court (Coram : K.R.Vyas,J) in the case of Karshanbhai Vastabhai Bhasker v/s State of Gujarat & Anr. reported in 1999(1) GCD 638 (Guj), that if a daily wager served more than 10 years as on 1.10.1988, shall be entitled to pension, gratuity etc. from the date of service, squarely applies to the facts of the present case. In the instant case, the deceased had worked as a daily wager for around 20 Years and his service as work charge employee was more than 10 Years. Under the circumstances, the contents of the letter Annex.C are binding to the government. The concerned Executive Engineer or Deputy Engineer is supposed to verify the averments made by the petitioner promptly and ought to have responded the Jt. Secretary (Finance) with exact details. The affidavit-in-reply filed does not clarify the facts situation as narrated by the petitioner.Failure on the part of the respondents to produce copies of the orders of appointment of the

deceased Chamanbhai Jadav as daily wagers and later on as work charge employee, tilts the balance in favour of the petitioner. When an illiterate or uneducated widow of the deceased employee approaches for family pension under the Welfare Scheme framed by the State Government, and when the State is of the opinion that the averments made in the petition are not correct, then it would be obligatory duty on the part of the State Government to produce cogent evidence on convincing facts to the satisfaction of the Court to that effect.

For the reasons aforesaid, petition is allowed. Respondents are directed to compute and pay the family pension to the petitioner- widow of the deceased employee Shri Chamanbhai Jadav as per the Pension Scheme in light of the resolution dated 31.7.1987 from the date of the death of the husband of the petitioner i.e. from 13.10.1988 with arrears considering the services of the deceased employee from the date of his initial appointment in the year 1972 till the date of his death and shall continue to pay pensionary benefits to the petitioner in accordance with the Pension Scheme. The petitioner is also entitled to interest on such amount at the rate of 12% p.a. Respondents are further directed to start paying family pension to the petitioner within two months from today and shall clear up arrears with interest within 12 (twelve) months from the date of receipt of writ of this order.

Rule is made absolute accordingly. No costs.

27.8.2001 [C.K. BUCH, J]

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